

TOWN OF WESTFIELD
LOCAL LAW NO. 1 OF 2021

**“AMENDING SECTION 185-43(N) OF THE TOWN OF WESTFIELD ZONING CODE
REGARDING SOLAR ENERGY SYSTEMS”**

Be it enacted by the Town Board of the Town of Westfield as follows:

SECTION 1. AUTHORITY

This local law is adopted pursuant to the authority of Municipal Home Rule Law of the State of New York and Sections 261-263 of the Town Law of the State of New York, which authorize the Town to adopt zoning provisions that advance and protect the health, safety, and welfare of the community, and, in accordance with the Town Law of New York State, “to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefore.”

SECTION II. SOLAR ENERGY SYSTEM REGULATIONS

The current Section 185-43(N) of the Town of Westfield Zoning Code is hereby repealed and replaced in its entirety with the following:

N. Solar Energy Systems.

- (1) **Purpose.** This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of the Town by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives and intent:
 - (a) To take advantage of a safe, abundant, renewable and non-polluting energy resource;
 - (b) To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
 - (c) To invest in a locally generated source of energy to increase employment and business development in the Town of Westfield to the extent reasonably practical by furthering the installation of solar energy systems;
 - (d) To provide other benefits to the Town and its residents to mitigate impacts from the solar project;
 - (e) To mitigate the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources. The use of small-scale, on-farm sources alternative to energy generation is beneficial to local farmers allowing them the ability to cut utility costs and/or supplement their income;
 - (f) To protect adjoining/surrounding property owners by mitigating the potential impacts from large scale solar installations;
 - (g) To aid in the energy independence of the community as well as the country.
 - (h) To create zoning regulations in accordance with the Town’s Comprehensive Plan and other regional planning documents;

(2) **Definitions.** As used in this Section, the following terms shall have the meaning indicated:

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

DWELLING UNIT: Any residence/house/apartment that may be occupied or vacant

FARMLAND OF STATEWIDE IMPORTANCE - Land, designated as “Farmland of Statewide Importance” in the U.S. Department of Agriculture Natural Resources Conservation Service’s (NRCS) Soil Survey Geographic (SSURGO) Database on Web Soil Survey that is of state-wide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.

GLARE - The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

GROUND-MOUNTED SOLAR ENERGY SYSTEM - A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure that generates electricity for onsite or offsite consumption.

HOST COMMUNITY AGREEMENT – A contract between a developer and a local governing body, whereby the developer agrees to provide the community with certain benefits and mitigate specified impacts of the solar project.

NATIVE PERENNIAL VEGETATION - Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

NON-PARTICIPATING PROPERTY - A property that is not affiliated with a Solar Energy System project in any contractual manner.

PARCEL(S) - A tract of land owned by an individual or entity leased or otherwise controlled by an applicant upon which a Solar Energy System is proposed to be constructed.

PARTICIPATING PROPERTY - A property that is being leased for solar usage, or a property that has an agreement or lease but is not having solar related improvements constructed upon it.

POLLINATOR - Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

PRIME FARMLAND - Land, designated as “Prime Farmland” or “Prime Farmland where drained” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

ROOF-MOUNTED SOLAR ENERGY SYSTEM - A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

SOLAR ACCESS - Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

SOLAR ENERGY EQUIPMENT - Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

SOLAR ENERGY SYSTEM - The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. A Solar Energy System in the Town of Westfield is classified as a Tier 1, Tier 2, Tier 3 or Tier 4 Solar Energy System as follows.

- A. Tier 1 Solar Energy Systems include the following:
 - 1. Roof-Mounted Solar Energy Systems
 - 2. Building-Integrated Solar Energy Systems
- B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems less than 4,000 square feet in size (defined as the actual square footage of panels) and that generate no more than 110% of the electricity consumed on the site over the previous 12 months.
- C. Tier 3 Solar Energy Systems are systems that do not meet the definition of a Tier 1 or Tier 2 Solar Energy Systems and do not meet the requirements of a Tier 4 Solar Energy System.
- D. Tier 4 Solar Energy Systems meet the definition of a Tier 3 Solar Energy System but are over 25 acres in size (defined as the fenced in area that encloses the panels and other related solar energy equipment).

SOLAR PANEL - A photovoltaic device capable of collecting and converting solar energy into electricity.

STORAGE BATTERY - A device that stores energy and makes it available in an electrical form

WETLANDS - Any areas designated as such by the NYS Department of Environmental Conservation or the US Army Corps of Engineers

(3). Applicability.

- (a) The requirements of this Section shall apply to all Solar Energy Systems permitted, installed, or modified in the Town after the effective date of this Section, excluding general maintenance and repair.
- (b). Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than 5% of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Section.
- (c) All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”), and the Town Code.

- (d) All applicable substantive standards set forth herein are intended to apply to projects sited by the State Siting Board, the Office of Renewable Energy Siting, or any other government body of competent jurisdiction to provide siting approval for power plants within the Town of Westfield.

(4) General Requirements.

- (a) A building permit shall be required for installation of all Solar Energy Systems.
- (b) Issuance of permits and approvals by the Town Board and Planning Board shall include review pursuant to the State Environmental Quality Review Act ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”).
- (c) All permitted Solar Energy Systems shall be installed by a qualified solar installer.
- (d) This section shall not apply to any lot owned by a municipality.

(5) Permitting Requirement for Tier 1 Solar Energy Systems. Tier 1 Solar Energy Systems shall be permitted in all zoning districts by right, subject to the following conditions:

(a). Roof-Mounted Solar Energy Systems.

1. Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements:
 - a. Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface the highest edge of the system.
 - b. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - c. Height: Tier 1 Solar Energy Systems shall have the following height restrictions for all zoning districts: 2 feet above roof of highest existing structure, but shall not be higher than the allowed height in the underlying zoning district, unless a variance is received.
 - d. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.
2. Glare: All Solar Panels shall have anti-reflective coating(s) and proof of such must be provided with the building permit application.
3. Fire safety: All Roof mounted systems shall be designed and installed in accordance with the Uniform Fire Prevention and Building Code Standards.
4. Roof Access Points. Roof access points shall be located:
 - a. In areas that establish access pathways which are independent of each other and as remote from each other as practicable so as to provide escape routes from all points along the roof.
 - b. In areas that do not require the placement of ground ladders over openings such as windows or doors or areas that may cause congestion or create other hazards.

- c. At strong points of building construction, such as corners, pilasters, hips, and valleys and other areas capable of supporting the live load from emergency responders.
 - d. Where the roof access point does not conflict with overhead obstructions such as tree limbs, wires or signs.
 - e. Where the roof access point does not conflict with ground obstructions such as decks, fences or landscaping.
 - f. In areas that minimize roof tripping hazards such as vents, skylights, satellite dishes, antennas, or conduit runs.
5. Ground access areas. Ground access areas shall be located directly beneath access roofs and roof access points. The minimum width of the ground access area shall be the full width of the access roof or roof access point, measured at the eave. The minimum depth shall allow for the safe placement of ground ladders for gaining entry to the access roof.
6. Notification to the Fire Service. Notification in writing to the Fire Department having operational authority at the location where the system will be installed shall be made no later than ten (10) days following installation:
- a. Notification shall include a site map showing the location of the solar energy electrical panel, as well as the proper operation of the disconnect switch(s) in the event of a fire or other emergency situation where the homeowner, tenant or other personnel is not available or familiar with the safe shut down operation of unit so as to have the ability to cut power from the solar panels.
 - b. In addition, a proper written statement showing the method of shut down shall be posted inside the main electrical panel of the unit which can be readily accessible for and to firefighting personnel.
- (b) Building-Integrated Solar Energy Systems. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

(c) Tier 1 Solar Energy Systems are subject to the following conditions:

<i>System</i>	<i>Height</i>		<i>Electrical Generation</i>
	<i>Pitched Roof</i>	<i>Flat Roof</i>	
<i>Tier 1 Roof Mounted, Building Mounted and Building Integrated Systems</i>	<p>All solar surfaces and equipment shall not exceed 12 inches from the finished roof surface in all residential, districts; and 24 inches in the Commercial, Manufacturing, and Light-Industrial Districts.</p> <p>Panels shall not extend higher than the highest point on the roof surface</p> <p>Panels and equipment must be at least 18 inches from the roof edge</p> <p>Panels must be installed parallel with the roof surface orientation</p>	<p>Panels shall not extend above the top of the surrounding parapet or more than 24 inches above the flat surface of the roof, whichever is higher</p>	Limited to energy required for on-site use

(6) **Permitting Requirements for Tier 2 Solar Energy Systems.** Tier 2 Solar Energy Systems shall be permitted in all zoning districts as an accessory use and require a site plan review in accordance with the Town of Westfield Zoning Code and other Town land use regulations. The site plan review application shall include a site plan and address the following requirements:

- (a) Glare: All Solar Panels shall have anti-reflective coating(s) and proof of such must be provided with the building permit application.
- (b) Setbacks: Tier 2 Solar Energy Systems shall be set back a minimum of 50 feet from any side or rear property line. All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards. In all cases, the solar panels shall be located a minimum of 75 feet from any dwelling unit on an adjoining non-participating property.
- (c) Height: Tier 2 Solar Energy Systems shall be less than 12 feet in height.
- (d) Screening and Visibility.
 1. All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.
 2. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

(e) Tier 1 Solar Energy Systems are subject to the following conditions:

System	Minimum Lot Size	Maximum Area Coverage of Solar Panels	Setbacks	Height	Electrical Generation
Tier 2 Ground Mounted Solar Energy Systems			<p>A minimum of 50 feet from any side or rear property line.</p> <p>A minimum of 75 feet from any dwelling unit on an adjoining non-participating property.</p>	<p>Less than 12 feet in all residential districts.</p> <p>Less than 15 feet for all other districts.</p>	

(7) **Permitting Requirements for Tier 3 Solar Energy Systems.** Tier 3 Solar Energy Systems are permitted through the issuance of a special use permit within the Residential-Agricultural District, and subject to site plan review application requirements set forth in this Section. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Westfield requires the applicant to enter into a Solar Energy System PILOT and Host Community Agreement with the Town of Westfield.

(a) The application process for the installation of Tier 3 Solar Energy System shall be:

1. Application received by the Code Enforcement Officer (CEO) and checked to make sure the appropriate documents have been submitted. The CEO will then refer the application to the Town Board, which will forward it to the Planning Board for it to make a final determination as to completeness of the application. Applicants shall be advised within 10 business days of the first Planning Board meeting about the completeness of their application or any deficiencies that must be addressed prior to substantive review of the Special Use Permit and Site Plan.
2. Once the application is deemed complete and while the Planning Board is completing its reviews, the project/application shall be referred to the Town Board to begin completion of the Host Community Agreement. This agreement will need to be finalized before the Town Board acts on the Special Use Permit.
3. Subject to a public hearing to hear all comments for and against the application. The Town shall complete all public notice requirements in accordance with the Special Use requirements of the Town.
4. Referred to the Chautauqua County Planning Department by the Town Board pursuant to General Municipal Law §239-m if required.

5. Acted upon by the Planning Board to complete site plan review and make a report and recommendation to the Town Board.
 6. Acted upon by the Town Board to completed the SEQOR process determine whether a special use permit should be issued
- (b) Design and Application Requirements. Applications for Tier 3 Solar projects shall address and include the following:
1. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.
 2. Signage.
 - a. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.
 - b. As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
 3. Glare. All Solar Panels shall have anti-reflective coating(s) and proof of such submitted.
 4. Lighting. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast (dark sky compliant) from abutting properties.
 5. Noise. Information on any noise producing equipment (as determined by the Town based on application materials) shall be submitted. If necessary, the Planning Board will require analysis of the noise on any sensitive receptors, including single family homes.
 6. Tree-cutting. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible.
 7. Decommissioning.
 - a. Solar Energy Systems that have been abandoned and/or not producing electricity (defined as operated at a minimum of 50% capacity for a period of at least 6 months) for a period of 1 year shall be removed at the Owner and/or Operator's expense, which at the Owner's option may come from any security made with the Town as set forth in this law.
 - b. A decommissioning plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the

following:

1. The cost of removing the Solar Energy System (with no allowance for the recycling or salvage value).
 2. The time required to decommission and remove the Solar System and any ancillary structures.
 3. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
 4. All calculations shall be verified by the engineer employed by the Town.
8. Security.
- a. The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and/or engineer and approved by the Town Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125 % of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2 % annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System.
 - b. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
 - c. In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in this law.
9. Application Fees: All applications for Tier 3 solar energy systems shall include the appropriate fees as set by the Westfield Town Board. The Applicant shall reimburse the Town for all legal and expert/engineering costs required to review applications, whether made to the Town of Westfield, the Office of Renewable Energy Siting (“ORES”), or the Board on Electric Generation Siting and the Environment (the “Siting Board”).
10. Maintenance Plan: Applications shall include a maintenance plan for all leased lands (including required setbacks/buffers). (Noxious weeds shall not be tolerated. Monthly mowing shall occur in the months of May, June, July, August, and September. Monthly debris removal from the fence line is required.)
11. Safety; applications shall include a safety plan (including communication with emergency service providers).
12. Environmental and cultural resources; information on the environmental and cultural resources (as identified through the NYSDEC Mapping system and by the Town of Westfield) on the subject property and surrounding properties.

13. A property owner who has installed, or intends to install, a solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit by the Town does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace as a result of uses or development performed in accordance with Town Code.
14. The applicant is responsible for remediation of dedicated roads damaged by the construction and maintenance of a Tier 3 or Tier 4 solar energy system. A public improvement bond or other financial security, the amount thereof to be approved by the Town Board and the bond approved by the Town Attorney as to form, sufficiency, and manner of execution, shall be posted as a condition of permitting.

(8) **Permitting Requirements for Tier 4 Solar Energy Systems.** All Tier 4 Solar Energy Systems are permitted through the issuance of a special use permit within the Residential-Agricultural District, and subject to site plan and special use permit requirements set forth in this Section for Tier 3 projects (all requirements in §185-43(N)(7)). In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Westfield shall require all Tier 4 applicants to enter into a Solar Energy System PILOT and Host Community Agreement. These Tier 4 systems are very large systems that have a potential to significantly affect the Town of Westfield, its residents, and the economy of the community. Therefore, the Tier 4 systems shall require the following additional submittals, requirements, or revisions to the Tier 3 requirements:

- (a) An Agricultural Impact Statement to determine the impact to Agriculture in the Town. The Town of Westfield has a standard Agricultural Impact Statement Table of Contents that will be provided to the applicant. The Planning Board, on a project by project basis, will work with the applicant on finalizing the requirements of this Agricultural Impact Statement.
- (b) An Economic Impact Analysis to determine the impact to the economy of the Town. This includes the agricultural impacts in the Ag Impact statement and information as noted by the Town Planning Board.
- (c) Any Tier 4 Solar Energy System located on lands that consist of Prime Farmland soils or Farmland soils of Statewide Importance shall not exceed 50% of the area of Prime Farmland or Farmland of Statewide Importance on the parcel or project site as a whole (if multiple parcels are included) upon which panels and other solar energy equipment (the fenced in area) are to be installed. Any program in which the applicant participates that provides for the use of the land within the fenced in area as farm related uses may be excluded from this 50% coverage threshold calculation based on the amount of space actually occupied by the farm use. This exclusion will only be allowed based on the Planning Board's determination that these lands are being used for actual Agricultural uses.
- (d) If the project proposes to affect more than 50% of these Prime or Statewide Important soils, the applicant may purchase or lease (for the lease period of the proposed project) development rights, of an equal amount of land over the 50% threshold, of another farm within the Town of Westfield with Prime or Statewide Important soils located on that land to offset the farmland used or leased in the primary project area. The purchase or lease of the development rights becomes perpetual or so long as project is viable and until fully decommissioned.

(9) **Site plan application.** For any Solar Energy system requiring a Special Use Permit, site plan approval shall be required. This required site plan application shall include a site plan and the following information:

- (a) A Plan illustrating property lines and physical features, including roads, for the project site.
- (b) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures
- (c) A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- (d) A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- (e) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- (f) Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
- (g) Zoning district designation for the parcel(s) of land comprising the project site.
- (h) Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming (or other methodologies).
- (i) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
- (j) Engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.
- (k) A completed SEQR Full Environmental Assessment Form.
- (l) A Landscape Plan in accordance with the Special Use Permit requirements of this law.
- (m) A calculation of the area of the solar energy system in acres (as defined in the definition of Tier 3 and Tier 4 systems).
- (n) For applications for Tier 4 systems, any off-site infrastructure, including transmission lines and points of grid interconnection (POI), shall be noted on site plans and be included in review of the project. Any off-site POI should be subject to the same safety and visibility requirements as the balance of the project.
- (o) Any utility poles constructed as part of a solar project may be made available for co-location by other utilities.
- (p) Any such other additional information as may be required by the Planning Board a Town professional engineer or consultant, the Westfield Town Board, the Town Attorney, the Town Code Enforcement Officer, or other Town entity.

(10) Special Use Permit Design Standards.

(a) Specific Standards.

1. Lot size. There are no lot size requirements; the project must be shown to meet all setback and other requirements of this law.
2. Setbacks. All Tier 3 and Tier 4 Solar Energy Systems shall be set back a minimum of 50 feet from the fence surrounding the solar panels and equipment to all property lines and to the edge of any road right-of-way. Additionally, the setback from the fence line shall be a minimum of 300 feet from the side or rear of a dwelling unit on an adjoining non-participating property. The setback to any off-site participating dwelling unit shall be 100 feet from the side or rear of the dwelling unit.
 - a. There shall be no setback requirements for contiguous participating parcels.
3. Height. The Tier 3 Solar Energy Systems shall be less than or equal to 20 ft. The height of systems will be measured from the highest natural grade below each solar panel. This height requirement can be waived by the Planning Board if the panels are being raised to accommodate agricultural purposes (e.g. grazing).
4. Fencing Requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a fence, and meet any other regulatory requirements such as NEC, with a self-locking gate to prevent unauthorized access.
5. Screening and Visibility.
 - a. Solar Energy Systems smaller than 5 acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earthen berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
 1. Solar Energy Systems larger than 5 acres shall be required to:
 - a) Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.
 - b). Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible. The Planning Board will in good faith determine the adequacy of these measures in its sole and absolute discretion.
 - c) The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of 1 evergreen tree, at least 6 feet high at time of planting, plus

2 supplemental shrubs at the reasonable discretion of the Town Planning Board, all planted within each 10 linear feet of the Solar Energy System (. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species should be provided by the Town. This minimum screening requirement will be reduced if adjoining properties are participating properties. Review of survival of plantings will be required annually for three (3) years.

- d) For any buildings or structures (not panels) to be placed on the site, the applicant shall be required to submit plans illustrating how these structures will blend into the character of the area. For example, buildings can be made to look like agricultural structures such as barns.

6. Agricultural Resources. For projects located on agricultural lands:

- a. Any Tier 3 Solar Energy System located in areas that consist of Prime Farmland soils or Farmland soils of Statewide Importance shall not exceed 50% of the area of Prime Farmland or Farmland of Statewide Importance on the parcel upon which panels and other Solar Energy Equipment (the fenced in area) are to be installed. Any program in which the applicant participates that provides for the use of the land within the fenced in area as farm related uses may be excluded from this 50% coverage threshold calculation based on the amount of space actually occupied by the farm use. This exclusion will only be allowed based on a Planning Board's determination that these lands are being used for actual Agricultural uses.
- b. Tier 3 Solar Energy Systems located on Prime Farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets (See NYS Agriculture and Markets Guidelines).
- c. Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes. Once established, other agriculture uses such as pasturing livestock and apiculture are permissible and encouraged.
- d. Agricultural Restoration Requirements: once the system is decommissioned, the site shall be restored and remediated in accordance with the NYS Agriculture and Markets Guidelines (this will be a condition of the Special Use Permit).

7. Noise: The project shall be shown to not have any adverse noise impacts on any surrounding homes or other sensitive receptors (use of NYSDEC regulations concerning noise).

8. Hazardous Materials: The project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium or other hazardous materials). Specific material data information/specifications (SDS/MSDS sheets) shall be submitted on all components of the project. The applicant must ensure that no harmful chemicals will be leaked into the soils over the life of the project. For certain components of the project, information on spill containment systems will need to be provided. This required information shall be reviewed by the Planning Board, their consultants and the Fire Department.).

9. Solar Energy System Liability Insurance:

- a. The Holder of a Special Use Permit for a Solar Energy System Shall Agree to secure and maintain for the duration of the permit, public liability insurance as follows:
 - 1) Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence (\$10,000,000 aggregate) which shall specifically include the Town of Westfield and its officers, councils, employees, attorneys, agents and consultants as additional named insured;
 - 2.) Umbrella coverage: \$10,000,000.
- b. Insurance Company: The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".
- c. Insurance Policy Cancellation: The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Westfield with at least thirty (30) days prior written notice in advance of cancellation.
- d. Insurance Policy Renewal: Renewal or replacement policies shall be delivered to the Town of Westfield at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- e. Copies of Insurance Policy: No more than fifteen (15) days after the grant of the permit before construction is initiated, the permit holder shall deliver to the Town of Westfield a copy of each of the policies or certificates representing the insurance in the required amounts.
- f. Certificate of Insurance: A certificate of insurance states that it is for informational purposes only and does not confer sufficient rights upon the Town of Westfield shall not be deemed to comply with this Law.
- g. Certificate of Insurance: A certificate of insurance states that it is for informational purposes only and does not confer sufficient rights upon the Town of Westfield shall not be deemed to comply with this Law.
- h. Tier 3 and Tier 4 Solar Energy Systems are subject to the following conditions:

System	Setback	Height	Lot Size	Fencing Requirement
Tier 3 and Tier 4 Solar Energy System	A minimum of 50 feet from the fence surrounding the solar panels and equipment to all property lines and to the edge of any road right-of-way.	Less than or equal to 20 feet.	No requirement.	All mechanical equipment shall be enclosed by a fence, meet any regulatory requirements such as NEC, and have a self-locking gate.

	<p>Fence Line – A minimum of 300 feet from the side or rear of a dwelling unit on an adjoining non-participating property.</p> <p>Off-site participating dwelling unit 100 feet from the side or rear of the dwelling unit.</p>			
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(11) **Waiver Relief.** The Town Board recognizes that no regulation can anticipate every creative plan that may be devised, which, though not in strict compliance with the provisions of this article, nevertheless, is not objectionable. Accordingly, the Town Board is hereby empowered to grant relief to an applicant from the strict application of this Section where the applicant provides sufficient grounds for a finding that the proposal comports as much as feasible with the spirit and letter of this Section and, though not in strict compliance therewith, remains aesthetically pleasing, protects neighboring properties, and preserves property values within the Town of Westfield.

(12) **Reimbursement of Fees.**

- (a) An Applicant shall reimburse the Town for any fee or expense incurred in hiring subject matter experts and attorneys to review whether a Solar Energy System proposed for siting pursuant to Article 10 of the New York Public Service Law or Article 94-c of the Executive Law complies with the substantive provision of this local law.
- (b) The applicable fees for any review or permit required by this local law shall be set from time to time by resolution of the Town Board.
- (c) An Applicant for either state or local siting approval shall deliver to the Town Board, along with its application, if local approval is sought, or one-hundred eighty (180) days prior to the filing of an Article 10 or Article 94-C application, if applicable, an amount equal to one percent (1%) of the estimated cost of the project (the “Initial Deposit”). This sum shall be held by the Town in a non-interest bearing account and shall be available to the Town to pay consultants and attorneys engaged by the Town to assist in its review of and preparation for an Article 10 or Article 94-c application. Should the Town be awarded intervenor funds, it shall switch to and deplete those funds before making further use of the Initial Deposit. Following the approval or denial of the state or local application, the Town shall return to the Applicant any excess funds remaining in escrow. If the escrow account has been depleted prior to approval or denial of the application, the Applicant shall deposit such funds necessary for the Town to pay any outstanding consulting fees.

(13) **Host Community Agreement.** Prior to the issuance of a building permit for any Tier 3 or Tier 4 Solar Energy System, the Applicant for such system shall enter into a Host Community Agreement with the Town of Westfield, which shall:

- (a) Contractually obligate the Applicant to comply with any terms and conditions of any special use permit approval of the Town Board;
- (b) Provide for payment by the Applicant to the Town of an impact fee to be used and applied by the Town to pay for and/or offset the costs and impacts incurred by and/or arising due to the development and/or operation of the solar energy system. The amount of such impact fee shall be established by the Town Board by resolution adopted from time to time, based upon the amount of energy produced by the project and such other factors as the Board shall determine;
- (c) Provide for such other contractual requirements as may be necessary given the specific elements of a particular project; and
- (d) If the Applicant and/or owner of the project shall enter into an agreement with the Chautauqua County Industrial Development Agency to provide for an abatement of real property taxes or other tax exemption or abatement, be cross-defaulted with the agreements between the Applicant and/or owner and the Chautauqua County Industrial Development Agency.

(14) **Ownership Changes.** If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the ownership change.

(15) **Safety.**

- (a) Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
- (b) Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.
- (c) If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable zoning code and fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.

(16) **Permit Time Frame and Abandonment.**

- (a) The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of 18 months, provided that construction has commenced. In the event construction is not completed in accordance with the final site plan as may have been amended and approved, as required by the Planning Board, within 18 months after approval, the applicant or the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.

- (3) Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the Town may notify and instruct the owner and/operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 360 days of notification.
 - (4) If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.
- (17) **Enforcement.** Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.

SECTION III. SEVERABILITY/ VALIDITY

If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION IV. EFFECTIVE DATE

This local law shall take effect immediately upon filing with the New York Secretary of State.